IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1976 OF 2007

Shri Dhirajlal Prabhubhai Tailor ..Petitioner

Vs.

Shri Nandkumar Ramlal Sancheti ..Respondent

Mr. R.S. Kate for petitioner.
Mr. S.R. Page for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : March 23, 2007.

P.C.:

1. Heard Mr. Kate the learned counsel for the petitioner and Mr. Page the learned counsel for the respondent.

2. The petitioner has moved an application at Exh.16 in Civil Appeal No. 466 of 2005 seeking amendment in the plaint of the suit already decreed and decree being under challenge in the said appeal. He had also filed an application under Order 41 Rule 27 of C.P.C. for bringing additional documents on

record. Both these applications have been rejected by the Lower Appellate Court.

3. The Lower Appellate Court referred to the provisions of Order VI Rule 17 of C.P.C. and noted that all the averments made in the amendment draft were within the knowledge of the defendant when the Written Statement was filed and there was no occasion to believe that the defendant could not raise the same during the pendency of the suit. Having regards to the proposed amendment set out in Exh.16, the view taken by the Lower Appellate Court cannot be termed as illegal or perverse and, therefore, the challenge to the order passed below Exh.16 must fail.

4. However, along with application at Exh.18, a list of documents was filed. Out of these 28 documents, six of them appear to be public documents and they pertain to either to the suit property or other property held by the plaintiff. It will be, therefore, appropriate that these six documents are allowed to be taken on record in the pending appeal, subject, of course, to the evidence to the contra to

be filed by the plaintiff.

5. Hence, the petition is rejected. However, the following documents are allowed to be taken on record in Civil Appeal No. 466 of 2005:-

(a) Property Survey No.5+6/2, Plot No.11 purchased by the respondent of 10 Gunthas at Nangargaon, Lonavla.

(b) Property Survey No.53 purchased by the respondent.

(c) 5 to 17 City S. extract of the properties owned by the respondent.

(d) Receipts of the Photographs from Alankar Photo Studio, Lonavla.

(e) Certified copy of the notice produced by the plaintiff in the said Civil Suit against the respondent.

(g) Mutation Ferfar in the name of respondent on 13/12/1996.

. Writ to go to the Lower Appellate Court forthwith and the appellant shall apply to the court within one week from today.

(B.H. Marlapalle,J.)